

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600

**Case No. A-5762**

**PETITION OF ALLEN WELTMANN**

(Hearing held June 12, 2002)

**OPINION OF THE BOARD**

(Effective date of Opinion, July 5, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Section 59-C-1.323(B)(1). The existing air conditioning units require variances of 3.80 feet as they are within 4.20 feet of the side lot line and of 5.80 feet as they reduce the sum of both side yards to 12.20 feet. The required side lot line setback is eight (8) feet and the required sum of both side yards is eighteen (18) feet.

Cindy McClure, of Art Design Build, appeared with the petitioner at the public hearing.

The subject property is Lot 3, Block 13, Rollingwood Subdivision, located at 7304 Brennon Lane, Chevy Chase, Maryland, in the R-60 Zone (Tax Account No. 00531501).

Decision of the Board: Requested variances **denied**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioner seeks variances for the existing air conditioning units located in the northern side yard of the subject property.
2. Ms. McClure testified that the front yard of the property slopes upward and that the air conditioning units are currently located at the only level area on the lot. Ms. McClure testified that if the units were to be located in the rear yard, it would increase the wear and tear on the units.
3. Ms. McClure testified that the topography of the property requires that the air conditioning units be located at their current site and that the current location of the units has the least impact on the adjoining neighbors. Ms. McClure testified that the units could not be located in the southern side yard because of an existing tree and a retaining wall. In response to questions from the Board, Ms. McClure stated that the all of lots in the neighborhood slope toward Brennon Lane.

## **FINDINGS OF THE BOARD**

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variances must be denied. The requested variances do not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

*(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the petitioner's property has no exceptional topographical or other conditions that are not shared by the neighboring and adjoining properties. The Board finds that the shape and size of the petitioner's lot does not materially differ from other lots in the neighborhood. See, Exhibit No. 10 (zoning vicinity map).

The Board notes that the air conditioning units could be located elsewhere on the property without the need for a variance.

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements for the grant of a variance set forth in that section. Accordingly, the requested variances of 3.80 feet from the required eight (8) foot side lot line setback and of 5.80 feet from the required eighteen (18) foot sum of both side yards for the existing air conditioning units are denied.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Donna L. Barron, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 5th day of July, 2002.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.